Economic Concerns and Attitudes of the Intellectuals of Thessalonike

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A few initial remarks are necessary, in order to clarify the topic and my approach to it. First of all, the intellectuals to whom I refer are not only those commonly so considered, such as theologians or thinkers or men of letters, but also those educated men who produced statements with a normative purpose. In the period and place under discussion, this means primarily the jurists, Constantine Harmenopoulos and Matthew Vlastares in the first instance. Second, I will leave out of the discussion most of the social issues and concerns that were so prominent in the thought of Thessalonian intellectuals in the fourteenth century as a result of the profound social upheavals that preceded the Zealot revolt, were contemporary with it, or followed it. I will concede from the start that social and economic concerns are often intertwined, especially in the medieval period when economic thought was to varying degrees embedded in social and political structures of thought. Nevertheless, the focus of my concern here is on issues of economic thought.[1] Third, I do not plan to take each of the intellectuals active in Thessalonike and investigate his economic ideas. Rather, I will concentrate on a few economic issues and try to show how they were treated by various intellectuals. I shall discuss three topics: the defense of private property; freedom in exchange; and lending at interest, which Western medieval thinkers and medievalists call usury.

The Defense of Private Property and the Rights of the State

Some intellectuals voiced concern about the property rights of individuals or institutions, sometimes in contrast to the right of the state either to dispose of private property at will or to take particular fiscal measures. The texts I have in mind are circumstantial in nature, having been written to address specific events or practices; although they are not treatises on ownership, they incorporate statements regarding it. These texts are Thomas

[1] There exists an earlier treatment of the social and economic thought of intellectuals and jurists in Thessalonike, by C. Triantaphyllopoulos: *Ἡ Ἑξάβιβλος τοῦ Ἀρμενοπούλου καὶ ἡ νομικὴ σκέψις ἐν Θεσσαλονίκῃ κατὰ τὸν δέκατον τέταρτον αἰῶνα* (Athens, 1960). I should like to thank two anonymous readers for useful comments.

Magistros' treatises on the imperial office and on the rights of subjects, and Nicholas Kavasilas' still so-called "Anti-Zealot" Discourse.[2]

Thomas Magistros was a philologist and man of letters who took a profound interest in the political affairs of his times. We may consider him a political theorist and one, furthermore, who expressed a train of thought that argued for increased autonomy of the cities; we assume that he had in mind Thessalonike in particular. His treatise on the imperial office (whose date, I think, must be before 1304) contains the traditional elements that must govern relations between the good emperor and his subjects: the emperor must, above all, show himself to be just, but also generous and philanthropic. But at the same time, Magistros discusses critically certain practices current at the time, and makes suggestions regarding the reciprocal duties of the emperor and his subjects, and for the better governance of the empire. Much of what he writes in that respect is outside the scope of this paper. However, his statements concerning what he considers abusive fiscal practices do have certain economic implications, since they touch on the issue of private property.

I think it is correct to say that Magistros insists on the property rights of the subjects, which are paramount. Indeed, he goes so far as to argue that even when the emperor makes donations he is not giving of his own goods, but rather of those of his subjects, whose administrator he is.[3] The proximate cause, the circumstantial fact underlying Thomas' position, is the extension of fiscal exactions during the early Palaiologan period. Extraordinary taxes were imposed while the state laid heavy claims on treasure trove and on the property of those who died without children and without a testament. On the matter of treasure trove, where the Palaiologan state claimed ownership of the totality of the goods thus discovered, Magistros counters that this constitutes forceful alienation of property given by God to the individual who has recovered the treasure. Therefore, in his view, the emperor, representing the state, behaves like a tyrant rather than as a good king.[4] Similarly, Thomas' objection to the appropriation, by the state, of the property of people dying intestate and with no children is based on the property rights of individuals (and of the church, which, according to law, had rights to one-third of the property of the deceased).[5] As he put it, "you appropriate the goods of others, without taking into account the rights of the person who owns them . . . you inherit the property of others."[6] His extensive critique of the imposition of extraordinary taxes is evidence of the same attitude, which privileges private property and seeks to limit the rights of the fisc: "When, because of some

[2] I. Ševčenko, "Nicolas Cabasilas' 'Anti-Zealot' Discourse: A Reinterpretation," *DOP* 11 (1957): 79–171. On Thomas Magistros' *Περὶ βασιλείας*, see A. E. Laiou, "Le débat sur les droits du fisc et les droits régaliens au début du 14e siècle," *REB* 58 (2000): 97–122; PG 145: 448 ff; his *Περὶ πολιτείας* is published in PG 145: 496–548.

[3] PG 145: 456; Laiou, "Débat," 99.

[4] PG 145: 479.

[5] PG 145: 485; cf. Novel 12 of Constantine VII. in Zepos, *Jus* 1: 235–38. Closer to the period under discussion is Novel 26 of Andronikos II (confirmed in 1305, 1306, or 1307) on the division of the property of people who die without direct issue; the most recent discussion of this document may be found in Laiou, "Débat," 115–20.

[6] PG 145: 485: τῶν μὲν ἀλλοτρίων ὡς οἰκείων ἀντιποιούμενοι, τοῦ δὲ κεκτημένου μηδένα μηδοπωστιοῦν ποιούμενοι λόγον. . . . ὑμεῖς κληρονομεῖν ἀξιοῦτε.

need, you lack money, and you order the subjects to pay (extraordinary) taxes, is this not the exercise of force and is it not opposed to the care that you owe them?"[7]

In brief, Thomas Magistros defends the property rights both of private individuals and of the church, at the same time trying to limit the fiscal rights of the state. It should be mentioned, however, that this defense of private property is less a Roman, or modern, defense, and more a medieval one. What he is trying to safeguard is, on the one hand, the privileges given to *pronoia* holders and, on the other, the rights of the church as well as those claimed by the inhabitants of the cities; many of these rights had been granted by the fisc itself, whose weight Magistros wishes to reduce.[8] He does, elsewhere, give special value to private property. In his treatise on the rights of subjects (*Περὶ πολιτείας*), he argues that the army of the cities must be composed only of property owners, those who own houses and fields, and are well established in the city.[9] Those who own nothing, he says, have nothing they feel moved to protect, and they will easily turn traitor. This, however, is less an economic argument and more a political one, similar to those advanced in eighteenth-century England in favor of limiting the vote to property owners.

An eloquent defense of private property is offered by Nicholas Kavasilas in his Discourse traditionally labeled "Anti-Zealot."[10] How, he wonders, can a polity survive without the ultimate good, liberty? It can survive only if the people in power imprison the subjects or treat them as enemies. But if the subjects are enslaved, they cannot be useful to themselves or to the state. Because, and here is the telling argument, if one does not have security of possessions, if private goods are not safe from state action, then the mere mention of the state will cause people to tremble. No one, then, will work to gain money: not the peasant and not the merchant, since they know that they are working for others. And when that happens, from whom will taxes be collected?[11] Bearing this in mind, good officials have always tried to provide justice, liberty, and internal and external security.

This looks like a good but partial liberal argument: in order to function properly, productive forces need an institutional framework which provides security and stability. A person will not invest if he is not certain that profits will go to himself rather than to others. Kavasilas' thought does not extend to the other half of the modern liberal position: that there should be no state interference in the economic process. So his is not an argument for a laissez-faire economy. In context, it constitutes defense of private property (a medieval sort of private property, as often as not granted by the state), centered on a specific issue: Kavasilas does not think that the civil government should appropriate private

[7] PG 145: 481: καὶ μὴν καὶ τὸ τοῖς ὑπηκόοις, ἐπειδὰν ἠστινοσοῦν καταλαβούσης ἀνάγκης ἀπορῆτε χρημάτων, ἔπειτ' εἰσφορὰς ἐπιτάττειν, ... πῶς οὐκ ἀτεχνῶς βίαιον, ἢ πῶς οὐκ ἔξω τῆς παρ' ἡμῶν ὀφειλομένης τουτοισὶ προμηθείας;

[8] For a fuller justification of these arguments, see Laiou, "Débat," passim.

[9] PG 145: 521.

[10] The date remains uncertain. Ševčenko, "'Anti-Zealot' Discourse," 170, dates it ca. 1344, but there were objections to that date, and it may be that it should be pushed forward to the last third of the 14th century, that is, after the battle of the Maritsa, as George Dennis suggested, and as Ševčenko himself admits: idem, "A Postscript on Nicolas Cabasilas' 'Anti-Zealot' Discourse," *DOP* 16 (1962): 403–8. Ath. A. Angelopoulos, *Νικόλαος Καβάσιλας Χαμαετός. Ἡ ζωὴ καὶ τὸ ἔργον αὐτοῦ* (Thessalonike, 1970), 89, dates it to after 1347, after Kavasilas' return to Constantinople from Thessalonike (on the argument that if it refers to events in Constantinople it must been written there, and also that the author was too young in 1344).

[11] Ševčenko, "'Anti-Zealot' Discourse," para. 26, and see comment on pp. 170–71. Cf. para. 10.

property, that is to say, the revenues or, even less, the capital of monasteries, in order to provide for defense. But in the paragraph under discussion the author generalizes, and this is why we are permitted to discuss his statement as affecting private property as a whole.

These ideas reflect aspects of contemporary reality. Thomas Magistros' protestations are a response to increased fiscal burdens, while those of Kavasilas refer to a specific act of alienation of the revenues of monastic holdings in the interest of common defense. They also reflect the complex Byzantine view of property, a view which, in the fourteenth century, comprises both the concepts of Roman law and those that arise from interlocking rights: it is not by chance that both Kavasilas and his fictional interlocutors differentiate between usufruct—or ownership of revenues—and *dominium* over estates.[12]

Freedom in Exchange

The question of freedom in exchange seems to have received some attention in fourteenth-century Thessalonike. In brief, the general issue is as follows. Throughout the Byzantine period, there were two potentially conflicting traditions and concepts regarding exchange. One stems from Roman law and accepts that any contract between parties that act freely and without fraud or constraint is a valid contract. The price at which goods are sold is arrived at through negotiation between the contracting parties, who are allowed to try to deceive one another up to a point. The other concept, deriving from the church fathers and ultimately from Plato and Aristotle, is that of social and economic justice and the protection of the weak. In law, this is incorporated in Justinianic or perhaps pre-Justinianic legislation which states that, even if a contract is concluded by freely acting parties, it becomes invalid if the sale price is "minimal," that is, less than 50 percent of the true price.[13] This measure, originally conceived as protection of the seller from his own actions, and constituting interference in the freedom of exchange, is known in legal scholarship as (a measure against) *laesio enormis,* that is, excessive damage. In Byzantium the protection was widely extended in the ninth and tenth centuries, to cover, for example, labor contracts as well as the sale of land made at times of crisis (Novel of 934). By the eleventh century, the protection it afforded was being eroded, and eventually ways were found to cover up sales at a low price through the practice of partial donation of the thing sold.[14]

The Novel of 934, issued by Romanos I Lekapenos, had reversed land sales made at a cheap price at a time of hardship.[15] In his legal compilation, the *Hexabiblos*, finished in 1344–45, Constantine Harmenopoulos placed, next to the law regarding *laesio enormis,* a "Novel" which he attributes to the same Romanos I.[16] The "Novel" is attested with this attribution in only one other source, one of the many manuscripts of the *Synopsis Maior;* scholars consider this text to be not imperial legislation but, rather, a judicial deci-

[12] Ševčenko, "'Anti-Zealot' Discourse," para. 12, 14, 16, and p. 161. On the complex Byzantine views regarding property, see A. Kazhdan, "State, Feudal, and Private Property in Byzantium," *DOP* 47 (1993): 83–100.

[13] C. 4.44.2 = *Bas.* 19.10.72; cf. C. 4.44.8 = *Bas.* 19.10.78 (77). Cf. A. E. Laiou, "Κοινωνικὴ δικαιοσύνη: τὸ συναλλάττεσθαι καὶ τὸ εὐημερεῖν στὸ Βυζάντιο," *Ἀκαδ.Ἀθη.Πρ.* 74 (1999): passim.

[14] Laiou, "Κοινωνικὴ δικαιοσύνη," 117.

[15] N. Svoronos, *Les novelles des empereurs macédoniens* (Athens, 1994), no. 3, 72 ff.

[16] *Hexabiblos* 3.3.71.

sion.[17] Its tenor and dispositions are very different from those of the Novel of 934. In the latter text, the emperor had made a very harsh ruling on those who, taking advantage of the famine, had bought land at a price below half the "just price." They were to be expelled from these lands without recovering the money they had paid for it. If the price they had paid was not "minimal" within the letter of the law, but nevertheless was so low that it could be considered as resulting from the deception of and in harm to the seller, and if the revenues the buyers had already derived from the land were equal to the price paid, then the buyers would return the land without having claim to any moneys. If the revenues were lower than the price paid, then the original seller would recover his land after paying the difference. Harmenopoulos knew the Novel of 934, parts of which he summarized in *Hexabiblos* 3.3.7, omitting, however, the provisions regarding sale at a "minimal" price. Instead, he mentions, in connection with *laesio enormis,* the misattributed "Novel." In this, the "legislator" is much kinder toward the buyer, basically allowing him to make use of the law of the Basilics, that gives him the option of paying the full price and keeping the land or, if he does not wish to exercise that option, permits the seller to recover the land after having paid back the money he had received for it. Thus this supposed "Novel" reinforces the provisions of the classic legislation concerning *laesio enormis,* but does not extend them, as Romanos I had done. One wonders why the "Novel" is attributed to Romanos I, who had issued the much harsher legislation; one interpretation might be that Harmenopoulos here wishes tacitly to nullify the provisions of the Novel of 934.

A *scholion* to the *Hexabiblos*, furthermore, essentially does away with the protection afforded by the legislation on *laesio enormis.*[18] In an effort to reconcile two passages of the legislation,[19] one of which affords the protection while the other one says that consensual sales cannot be reversed, the scholiast draws a distinction between a sale that takes place voluntarily, which is not reversible, and one that is tainted with circumscription and deception (ἀπάτη), which *is* reversible. He considers that the *laesio enormis* applies to the second, an unnecessary and unsubtle interpretation of the law. The law, in fact, does not forbid deception, only deception after a certain point; indeed, the law assumes that such a sale could be the result of circumscription, but not of fraud (δόλος), which invalidates all contracts. In the case of fraudulent practice or when there is no fraud but there is too low a price, the law invalidates the sale automatically. The *scholion*, by drawing a distinction between "voluntary" sale and one which is the result of deception, places the burden of proof on the seller, who has to show that, if he had sold his property at less than 50 percent of its just price, he had done so because he was duped and did not know his rights. When both contracting parties *know* their rights, according to the scholiast, the contract is valid even though the price is minimal. The scholiast then explains *why* one might voluntarily sell at below half the just price in an irreversible contract: it might be as a favor or by donation, or because of the times and circumstances, or because a property with high capital value

[17] J. Leunclavius, *LX Librorum Βασιλικῶν . . . Ecloga sive Synopsis* (Basel, 1575), App., 43. See the excellent study by N. P. Matses, *Ἐπί τινος ὑποτιθεμένης Νεαρᾶς Ρωμανοῦ τοῦ Λεκαπηνοῦ* (Athens, 1970). On the issue of *laesio enormis,* see also *Synopsis Maior* A.XII.19 and *scholion* (u) (Zepos, *Jus* 5: 51).

[18] *Hexabiblos* 3.3.73. (*Bas.* 19.10.76 (75) = C. 4.44, from the Codex Constantinopolitanus (1353).

[19] One is *Hexabiblos* 3.3.73 = *Bas.* 19.10.76(75), which states that a sale which has been concluded with the consent of the parties cannot be invalidated even if the seller offers double the purchase price to the buyer. The other, the law on *laesio enormis,* is *Hexabiblos* 3.3.69–72 = *Bas.* 19.10.72. Fraud and violence annul contracts: *Bas.* 19.10.75, 19.8.8, 19.10.71, 19.1.42.

might, at that particular moment, be unproductive of revenue. Such cheap sales are not reversible, as long as everyone knows his rights.

In his interpretation, the scholiast makes information the basis of proof, and thus vitiates the protection that the law had automatically afforded to the seller. The recurring words "διὰ χάριν, συγκαταβάσει καὶ δωρεᾷ" bring to mind the sales contracts of the period, in which the seller of land, especially but not only to monasteries, includes in the contract the statement that part of the value of the property has been donated—what I have called the combined sales-and-donation contracts.[20]

Unfortunately, we do not know by whom the *scholion* was written. In any case, it must have been composed before or in 1353, which is the date of the codex Constantinopolitanus, in which it appears. If my interpretation is correct, it shows that someone in fourteenth-century Thessalonike (if that is where the commentary was written) was highlighting and justifying in legal terms a reality which was already in place, and in which freedom in exchange was extensive, just as judicial or governmental interference was declining. Perhaps this accords well with the defense of private property undertaken by other intellectuals. It is a viable economic position, in fact a progressive one with regard to the issue of free exchange. But it does, at the same time, indicate a diminution of social concern, at least if one contrasts it with the intent of older legislation.

Lending at Interest

It is partly in the various anti-usury treatises that scholars have identified social concern in the fourteenth century, and to this issue I will now turn. In a Christian society, discussion of lending at interest, with the heavy burden of both Old and New Testament prohibitions, was inevitable; it was, however, much less heated, less acute, and certainly less universally negative in Byzantium than in western Europe. This is an important issue in the development of economic thought, and as such it is supremely pertinent to our topic.

I have discussed Byzantine attitudes toward lending at interest elsewhere, but a few salient points are worth repeating, by way of background.[21] The Byzantines, although they were heirs to the same Aristotelian and patristic texts as the Western Europeans of the Middle Ages, had, generally speaking, a very different attitude toward lending at interest from that of the canonists, theologians, and moralists of the Western early and high Middle Ages. To put it in summary terms, lending at interest was, in actuality, permitted to laymen in Byzantium, except for brief periods, while in western medieval Europe it was not. In the Byzantine Empire, interest was permitted by civil law; canon law, while forbid-

[20] See, for example, N. Oikonomidès, *Actes de Docheiariou* (Paris, 1984), no. 42, lines 24–34, 70: sale of land at 600 hyperpyra, while the rest of the price is left to the monastery for the salvation of the soul of the parents of the seller. Cf. ibid., no. 43, lines 6–7: this (the previous contract of document 42) is not really a sale, but a donation. Cf. MM 4: 401, 394–95, 407–9, 410–11, 412–14.

[21] See A. E. Laiou, "God and Mammon: Credit, Trade, Profit and the Canonists," in N. Oikonomides, ed., *Byzantium in the Twelfth Century: Canon Law, State and Society* (Athens, 1991), 261 ff; eadem, "The Church, Economic Thought and Economic Practice," in R. F. Taft, S. J., *The Christian East, Its Institutions and Its Thought* (Rome, 1996), 448 ff, and eadem, *"Nummus parit nummos:* L'usurier, le juriste et le philosophe à Byzance," *CRAI* (1999): 583–604.

ding interest-bearing loans to ecclesiastics, did not extend the prohibition to laymen, nor did it preach such an extension. The great canonists of the twelfth century accepted that laymen were allowed to charge interest, and only rarely made hortatory statements regarding laymen.[22] The recognition, by the canonists, of the validity of civil law necessarily limited the possibility of debate, and led to a different approach from that adopted in the West. In the twelfth century, both canonists and the anonymous jurist of the commentary in the *Ecloga Basilicorum* seem to have formulated an early theory of interest as profit accruing to capital, a more advanced formula, in economic terms, than those proposed in western Europe in the twelfth century or even later.[23]

Byzantine theologians and moralists, starting with the church fathers of the fourth century, had a good deal to say against lending at interest. Eustathios of Thessalonike is one of those who were most vocal against this practice, even though a careful reading of his work suggests that he was condemning immoderate interest rates rather than the practice *per se* and *in toto*.[24] In brief, through the twelfth century, civil law (with a few short-lived exceptions), as I have suggested, and canon law (with one possible exception) accepted the reality and the legality of interest-bearing loans, while some moralists and theologians wrote against it, but with nothing like the complex argumentation and outright condemnation that we find in western Europe. An interesting debate is visible in the twelfth century, but it concerns the legal and economic basis of interest-bearing loans rather than the moral basis against it.

In Thessalonike of the fourteenth century, by contrast, there seems to have been vivid concern about lending at interest, and a generally negative attitude, in the texts that have survived. That there *was* a debate is suggested by Kavasilas' oration against usurers in which he replies to a number of arguments. But the position of those who defended lending at interest is known primarily from the polemical texts of their opponents.

A number of the theologians, moralists, and intellectuals of or in Thessalonike wrote in scathing terms, either about greed (πλεονεξία) generally, or about greed and usury specifically. Nikephoros Choumnos, in his *Θεσσαλονικεῦσι συμβουλευτικὸς περὶ δικαιοσύνης*,[25] like all good Byzantines, considered greed to be incompatible with justice, since in its essence greed means that one tries to appropriate more than is fair, and thus, in a zero-sum game, cheats others of what belongs to them.[26] Choumnos calls greed the oldest evil, while in one eloquent passage he specifies the evil as being the appropriation of the fruits of the labor of others—a statement that in other texts is often attached to the taking of interest in a loan.[27]

Similar statements may be found in the work of Thomas Magistros who, in a letter to Patriarch Niphon (1310–14), tells the patriarch that because of his presence and polity, the rich no longer "increase their own property by inappropriate additions while forcing the

[22] The exception is the commentary of Zonaras on canons 17 of Nicaea and 5 of Carthage: everyone should eschew usury: G. A. Rhalles and M. Potles, *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, vol. 2 (Athens, 1852), 151–52, and vol. 3 (Athens, 1853), 306–8.

[23] Laiou, "*Nummus*," 589 ff.

[24] T. L. F. Tafel, *Eustathii metropolitae Thessalonicensis opuscula* (repr. Amsterdam, 1964), 72 ff.

[25] J.-Fr. Boissonade, *Anecdota Graeca*, vol. 2 (Paris, 1830; repr. 1962), 137–87.

[26] Ibid., 157 ff.

[27] Ibid., 159, 168.

indigent to weep and making them poorest of the poor."[28] Toward the end of the century, the homilies of Isidore of Thessalonike speak to the same points.[29] Mostly, the problem of usury was addressed in terms which are traditional and show little originality of thought, especially on the economic aspects of the question. A look at Gregory Palamas will suffice as an example.

In a sermon on Luke 6:32: καθὼς θέλετε ἵνα ποιῶσιν ὑμῖν οἱ ἄνθρωποι, ποιεῖτε αὐτοῖς ὁμοίως ("as you would like men to do unto you, so do unto them"), after having spoken of the universality of the teaching, and said that it is an easy, just, and profitable command which differentiates the behavior of Christians from that of others, Palamas becomes more specific. To love only those who love us, and to lend where we are sure to receive our money back does not gain us rewards in heaven, nor does it cleanse the soul from sin. To not love even those who love us is a sin—as for example when people rise against those in authority, civil or ecclesiastical. Usury appears in this context. Those who lend expecting to recover their capital within a certain time and charge interest, especially high interest, are worse than sinners, for they disobey both the New Testament and the Old Law. The emphasis on immoderate interest is common among Byzantine theologians who, more, I think, than their Western counterparts, seem to condemn illegally high rates of interest rather than interest in general.[30] This is normal, perhaps, since they had to live with the fact that civil law permitted interest-bearing loans. Lending to those who cannot return the money, says Palamas, is a seed that will result in a crop that will multiply the benefit, in the afterlife. A little more interesting is the statement that he who lends at interest mars not only his own reputation but also that of his city, since he does not use to her benefit the goods he has as her citizen and by virtue of being her citizen.[31] Finally, here, as in earlier texts, one is allowed a little uncertainty as to what exactly is being condemned. The general tenor is the blanket condemnation of interest. However, when Palamas becomes more specific, he seems to be talking about those who have no money (to whom no one wants to lend) and those who are poor but not indigent (to whom creditors lend money at interest, thus causing them to lose everything they possess). In other words the real condemnation is on social grounds, or on grounds of justice as conceived by the Byzantines: it is not "just" for one person to have surplus funds and not to share them with those who have no money.[32]

[28] PG 145: 369: νῦν οὐ πένητάς ἐστι πρὸς εὐπόρων κακοῦσθαι, καθάπερ ἐν πόλεων ἁλώσει καρπουμένων τοὺς δυστυχεῖς καὶ τὰ μὲν σφέτερ' αὐτῶν ἀτόποις ἐπαυξόντων προσθήκαις, ἐκείνους δὲ κλαίειν ἀναγκαζόντων καὶ καθιστάντων πενήτων πένητας.

[29] See O. Tafrali, *Thessalonique au 14ème siècle* (Paris, 1913), 112 note 1, 116 note 3, and B. Ch. Christoforides, *Ισιδώρου Γλαβά Αρχιεπισκόπου Θεσσαλονίκης ομιλίες*, (vol. 1 [Thessalonike, 1992], no. 28, M 46 H = K. N. Tsirpanlis, "Συμβολὴ εἰς τὴν ἱστορίαν τῆς Θεσσαλονίκης. Δύο ἀνέκδοτοι ὁμιλίαι Ἰσιδώρου ἀρχιεπισκόπου Θεσσαλονίκης," *Theologia* 42 [1971]: 548–81), no. 31 (pp. 85 ff).

[30] Sophokleous tou ex Oikonomon, *Γρηγορίου ἀρχιεπισκόπου Θεσσαλονίκης τοῦ Παλαμᾶ ὁμιλίαι 22* (Athens, 1861), 46 ff. Cf. J. R. Melville Jones, ed., *Eustathios of Thessaloniki. The Capture of Thessaloniki* (Canberra, 1988), 154; Tn.L.F. Tafel, *Eustathii metropolitae Thessalonicensis Opuscula* (Frankfurt, 1832 [repr. Amsterdam, 1964]), 72 ff. Palamas makes reference to Luke 6:34, Deut. 23:19, 20, Levit. 25:37, and Psalm 14:5. The usurer destroys the life of the borrower, and loses his own soul, "for usury is the child of vipers."

[31] This is by reference to Psalm 54:11.

[32] Palamas also condemns both πλεονεξία (greed, but with the additional meaning of desiring or having more than one's just share) and φιλαργυρία (avarice), in a traditional manner: cf., e.g., his sermon on φιλαργυρία, in C. Triantaphyllis and A. Grappoutos, *Συλλογὴ Ἑλληνικῶν Ἀνεκδότων*, vol. 1 (Venice, 1874), 115–21.

The general attitude of our intellectuals then, is one of condemnation of the usurer on social and moral grounds, since he, with his greed, causes his fellow men to suffer. There is feeling in these texts, and indignation, but there is not much to interest the historian of the economy or of economic thought.

Nicholas Kavasilas does introduce some novelties in the debate. Certainly, his two works on the subject, his *Oration against Usurers* (*Λόγος κατὰ τοκιζόντων*) and his address *On Usury* (*Περὶ τόκου*), are the best-known texts on the subject from this period.[33] The "Oration against Usurers" is also the fullest such text after those of the fourth-century fathers.[34] In it, Kavasilas takes up various arguments that purportedly are used by usurers to justify the practice of lending at interest. He defeats them all, to his own satisfaction. He argues his case by reference to divine law and makes some interesting, and to my knowledge unique, remarks about the tenor of *civil* law. He discusses the effects of usury mostly in moral terms, somewhat less clearly and certainly less profoundly in economic terms. His analysis is indebted to patristic writings.

Let us look more closely at some of his arguments. His oration starts almost *in medias res,* with no introduction and no general statements, as if in the middle of an argument, or as if it were a preamble to a law, although it is surely too lengthy for that. There are some, he says, who argue that it is not mandatory to follow the law that forbids usury; those who do follow the law are praiseworthy, but those who wish to contravene it may do so. This looks like a direct reference to Novel 83 of Leo VI, which had rescinded the interest prohibition legislated by his father, Basil I (*Procheiros Nomos* 16.14), and which had started with the statement: "it would have been excellent and salvific if the human race conformed to the laws of the Holy Spirit and did not need human laws," and ended by saying he (Leo VI) does not wish to blame (his father's) law itself; however, that law is too perfect, and so he rescinds it. Kavasilas says that not one of the ancient laws is so framed that one may contravene it at will, and continues with a reference to the Psalms, which forbid interest altogether (Ps. 54:11, 12, 27:14). Economic arguments against the taking of interest are interspersed in the discussion.

Those who charge interest, says Kavasilas, do not work or take any risks; they gain without toil. It is an argument that, in various forms, has been used from the fourth century until and including Karl Marx.[35] But Kavasilas neither expands on it nor presents it in an economic context, but rather sees it as a factor differentiating usury from adultery, murder, and theft, all of which are also illegal, but carry risk, unlike usury. Equally undeveloped is the following argument: the usurer is profiting from the labor of others, to increase his money.[36] This is in the context of saying that even alms given by the usurer do

[33] PG 150: 727–50; R. Guilland, "Le traité inédit 'sur l'usure' de Nicolas Cavasilas," in *Εἰς μνήμην Σπυρίδωνος Λάμπρου* (Athens, 1935), 269–77. On Kavasilas, see Chr. Baltogou, "Η οικονομική σκέψη του Νικόλαου Καβάσιλα," *Βυζαντιακά* 16 (1996): 191–213, a disappointing discussion; M. Pantazopoulos, *Ρωμαϊκὸν δίκαιον ἐν διαλεκτικῇ συναρτήσει πρὸς τὸ Ἑλληνικόν* (Thessalonike, 1979), 3: 139 ff; cf. Baltoglou, "Economic Thought in the Last Byzantine Period," in *Ancient and Medieval Economic Ideas and Concepts of Social Justice,* ed. S. Todd Lowry (Leiden–New York, 1998), 421–23, and K.-P. Matschke and F. Tinnefeld, *Die Gesellschaft im späten Byzanz* (Cologne, 2001), 347–55.

[34] The date is traditionally thought to be 1351, but for no compelling reason. See below, 217–18.

[35] See Gregory of Nyssa, PG 44: 672; Zonaras' commentary on canon 17 of Nicaea, in Rhalles and Potles, *Σύνταγμα,* 2: 151–52.

[36] PG 150: 733.

not profit him, for what he gives is not legally his. Thus Kavasilas condemns usurers because they multiply their money, that is, they make a profit, by appropriating the fruits of the labor of others. The connection between interest and lack of labor on the part of the lender is an idea of patristic origin that seems to have found virtually no development since the twelfth century.[37]

In Kavasilas, there is a little development of the idea, but not in a way that promotes further thought. The usurer says, in his own defense, that by lending at interest he has saved many people from poverty. Kavasilas contests the intent: it was not charity but love of profit that made the usurer behave in this manner. In point of fact, the usurer aims at a transfer of wealth, from the borrower to himself. Any increase in wealth has resulted from the labor of the borrower—again, we have the condemnation of laborless profit. It should be noted here that Kavasilas is clearly and unambiguously talking of productive loans. But this does not lead him to any discussion or differentiation between consumption loans and loans for production; this is not unique in Byzantine writings about usury, but certainly there is less profundity here than in the twelfth century.

Finally, there is the argument presented by usurers that, while they might eschew charging interest to the poor, they might reasonably demand it from the rich. This could have become an economic argument regarding profit to capital, such as that developed in the twelfth century. Kavasilas does not permit it to become so. He says simply that the wealth of the creditor does not enter into it: all interest is illegal; sucking the blood out of the poor is simply a much worse sin.[38] The economic argumentation, then, is really rather thin, much thinner than among the twelfth-century canonists.

The moral argument is not original or subtle either, and a reference to the sterility of money depends entirely on a text of St. Basil. Usury is a mark of the human race, although the command is to love one's fellow man. If the New Testament (Matt. 25:41–46) condemns to eternal fire those who do not give to the needy from their own property, how much more will the usurer be punished, who takes the property of others? Nor will almsgiving profit the usurer, for he gives not of his own but of the property of others. People should lend money without expecting gain, a good Old Testament statement. The usurer harms not only himself but the city as well, just as the murderer or the thief does. Besides, had not St. Basil, when famine struck, laid the blame at the foot of the usurers? "Remit," he had said, "the heavy interest, so that the earth may bear its usual fruit. For when copper and gold and sterile things give birth unnaturally, nature which naturally bears fruit becomes sterile."[39] This argument on the sterility of money, which originates perhaps with Aristotle, certainly with the fourth-century fathers, and which led to so much productive thinking in western Europe, is here presented without any originality.

One other line of thought, on the contrary, has some value. The usurers, says Kavasilas, bring forth the argument that they do not deal unjustly with anyone, since they "receive from people who are willing." This is, in highly reduced form, an excellent argument deriving from Roman law, which accepts and defends the validity of contracts agreed upon by free individuals, in the absence of fraud, violence, or constraint. But, counters Kavasilas,

[37] Laiou, "*Nummus*," 599 and note 47; PG 150: 733. This seems to be based on St. Basil and St. Gregory of Nyssa.

[38] PG 150: 740.

[39] PG 150: 729, 732–33, 736–37, 748, and PG 31: 269.

these loan contracts are not truly freely arrived at; rather, people are forced by need, and they choose the lesser evil against the greater one: they have borrowed money from the usurer earlier, they cannot repay it, they fear he will not lend to them again, and so they suffer him to eat away their property by charging interest.[40] So this is a contract forced by need, and not the result of the exercise of free will. The argument presented here could have been one with major implications: it is connected with the very important question of what constitutes force, and therefore invalidates contracts. Does economic need constitute constraint of such a kind that the freedom of the will of the individual cannot be exercised? It is a question to which the answer ever shifts, in medieval times as in modern. Occasionally, in Byzantium, it had been accepted that economic need indeed invalidates contracts: see the Novel of 934. But in the late period, as we know from the documentation of the patriarchal tribunal in Constantinople, although people tried to show that economic need constituted force, and therefore invalidated contracts, the argument was never accepted.[41] Thus the contracting individual, in the absence of physical or political force, was assumed to be acting of his or her free will. Kavasilas does not develop an argument to the contrary. He introduces the idea that contracts involving loans at interest are not entered upon with the free will of the borrower, but he quickly dissolves this into a larger argument that the lender offends not only the borrower but also the commonwealth, and God himself.[42]

More interesting is Kavasilas' attitude to the civil laws. Here one may say that he is, indeed, original, for the common attitude, certainly the attitude of the twelfth-century canonists, was that the laws are to be observed which allow laymen to charge interest. To justify their practices, Kavasilas' usurers bring forth the civil law: "imperial law permits one to make profits in this fashion, which it would never have done, had it been a sin."[43] He first responds by saying that divine law has greater validity anyway, but then he gets into a real discussion. It is not every law, he says, that permits interest; some permit it and some not, and so according to some laws the usurer is allowed to do this, while according to others he is not. The reference to a law that disallows interest must be to the law of Basil I that was later abrogated by Leo VI. The usurer continues by noting that Basil I's measure is new law, and that the old law had permitted interest. Kavasilas counters with an argument that starts off well and then breaks down: is every new law worse than the old one? If so, then the usurer, who chooses which law to follow and therefore acts as a legislator, is the newest lawmaker of all. Besides, there is the old law and the oldest law, that of God, which forbids interest; at this point, the argument becomes specious.

Kavasilas argues further, on the basis of the laws which forbid clerics to charge interest, and permit aristocrats to charge only very low interest, that civil law clearly disapproves of interest, for it allows it only or mostly to base individuals, not to the best ones. "The law," he says, "allows the worst people to charge the highest interest rates, and the better people to charge the lower ones." Thus the law, continues our author, likens interest rates to the character of the lender, permitting rates appropriate to one's depravity (μοχθηρία).[44] In that case, says the usurer, why do we have laws? The answer constitutes one

[40] PG 150: 748.
[41] See, e.g., MM 2: 361–66 (1400).
[42] Ibid.
[43] PG 150: 740.
[44] PG 150: 741–44.

of the densest passages in this oration, and it makes reference to a number of the provisions of the laws governing interest, even though the references are oblique. According to Kavasilas' argument, the laws exist so that usurers will not charge the high interest allowed by ancient laws (could this be a reference to the pre-Justinianic law, or even to the pre-Constantinian period, when interest was unlimited?) but will limit their demands. The creditor may not receive higher interest even if the borrower is willing to pay it and has signed a contract to that effect.[45] Besides, the law states only the maximum interest allowed, not the minimum. Therefore, it is possible for a borrower to pay no interest, if it has been so agreed. Furthermore, in the case where there is no explicit mention of interest, the creditor may not demand it later. This is clear reference to the *Hexabiblos* 3.7.4: "Interest on the interest is not taken, nor interest which has not been agreed upon, that is, interest about which there was no agreement at the beginning of the case." Kavasilas is here using the provisions of civil law to prove that the law only halfheartedly permits interest; or, as he puts it, "you see that the law governing interest is not a law promulgated by men who want interest, but by men who would abolish it."[46]

This is, as I have indicated, by far the most original part of the oration. It goes right to the heart of the matter: civil law permitted interest, and throughout Byzantine history canonists and theologians had to take that into account. Kavasilas stands the law on its head; he argues against its validity, on the basis of the legislation of Basil I and disregarding the fact that the latter was short-lived. He finds in the current legislation sufficient hesitation to allow him to say that the law itself is not such that one should obey it. We will see that contemporary legal compilations provide grounds for such argumentation.

There is one other point of originality in this oration. Kavasilas internationalizes the argument: the Byzantines, he says, are unique in permitting interest, for neither the Jews, nor "the barbarians who are currently occupying Palestine," that is the Muslims, "nor the various Latin races" do so. "Only in our parts, following a wisdom acquired I know not where, the wise race of usurers has invented a new form of public salvation: iniquity . . . and they try to persuade men to replace divine commands by their own desires."[47] He is absolutely correct, of course, for the Byzantines (along with the Syrian church) were the only peoples of the Book to permit interest. The fact that he is aware of the practices of Muslims, Jews, and western Christians is in itself interesting and may provide one element of explanation for the extensive opposition to usury in the fourteenth century: the presence of foreign merchants, primarily Italians, who in their contracts avoided mention of interest, as we know from sources outside Thessalonike. Our author had the experience of Constantinople as well.

Kavasilas' address on usury, addressed to Anna of Savoy probably in 1351 from Thessalonike where they both were, is more circumstantial than the oration we have just analyzed.[48] The author is trying to persuade the regent, and through her the Emperor John V, to reissue a law of Andronikos III, dating from the end of the civil war between the two Andronikoi, which had remitted the interest (though not the capital) of the debts of the

[45] *Hexabiblos* 3.7.9, 12.

[46] PG 150: 744.

[47] PG 150: 736.

[48] Text and commentary in Guilland, "Le traité" (as above, note 33). For the date, see R.-J. Loenertz, "Chronologie de Nicolas Cabasilas, 1345–1354," *OCP* 21 (1955): 223 ff.

poorest creditors, the ones who had most suffered during the war.[49] The concern here is more social than economic or ideological. There is no general invective against the laws on usury; indeed, Kavasilas insists that these laws retain their validity, which is different from his argument in the oration. He adopts a moral and moralizing attitude, launching accusations against the rich for acting unjustly, for enriching themselves while ruining others, for behaving like wild animals, like robbers and thieves, all reminiscent of passages of the oration.[50] There is only one interesting, but very tendentious argument which has a legal context. Kavasilas tries to argue that the interest (τόκος) on a loan is like a deposit (παρακαταθήκη), in that the person who holds another man's property in deposit, if he has lost it through the actions of robbers, that is outsiders, is not required to return the deposit which he no longer holds in his possession. By analogy, the capital of a loan was meant to profit the borrower, so he has to restore it, even if he has lost it. On the other hand, the purpose of the interest was to benefit not the debtor, but rather the creditor. The money the borrower may have held in connection with the interest was not for himself, but rather was held by him in order to benefit the creditor. Therefore, interest is similar to deposit, and in case of unexpected calamity the borrower cannot be held responsible for its loss.

No law that I know of is being textually reproduced here. Kavasilas' meaning is clear, however. The substance of the legislation on deposit is covered by *Bas.* 13.2.20 and 13.2.35.[51] The closest parallel, in fact, is *Procheiros Nomos* 18.11, part of which is reproduced in *Hexabiblos* 3.9.15, and which does say that if a person holding a deposit loses it because of a robbery, his heirs are not held liable. In the absence of specific agreement to the contrary, the person is held liable only for losses that occur through negligence or fraud. The extension by analogy of the provision regarding deposit to interest, is specious and gratuitous; there are specific legal provisions governing interest, and the legislator at no point leaves an open question to which the answer has to be found in arguments by analogy.[52]

Nevertheless, the argument is not without interest. First of all, the very fact that Kavasilas is drawing this connection between deposit and interest may have some explanation, which at the moment eludes me; whatever the explanation may be, it does not suggest that his legal training was superb. Second, the interest is held to be the property of the creditor, a concept that might be worth some consideration. Third, it is notable that Kavasilas is making a legal argument, not the economic one which he could have made: he could have argued, for example, that the expected profit from the loan did not materialize, and therefore that interest as profit to money should not be charged. Finally, and most importantly, this argument by analogy does not condemn lending at interest in general, but only provides a would-be legalistic justification for remitting the interest of those who had fallen on hard times. The tenor, therefore, is very different from that of the oration against usury, whatever modern scholars may have said to the contrary.[53] This, incidentally, also puts into question the chronology and the locality of composition of Kavasilas' two texts

[49] Guilland, "Le traité," 274; cf. PG 150: 748 D–E, where the borrowers also lose everything.

[50] Guilland, "Le traité," 274.

[51] Also *Hexabiblos* 3.9.13, 15.

[52] Pantazopoulos, *Ρωμαϊκὸν δίκαιον*, 3: 142 states that Kavasilas' argument does not accord with Roman law, which provides for "regular" and irregular" (ὁμαλὴ καὶ ἀνώμαλος) deposit. Kavasilas examines "regular" deposit, and then generalizes to apply the same terms to interest-bearing loans; in the latter, however, the debtor is not relieved by chance events from the obligation to pay the interest.

[53] See, for example, Angelopoulos, *Νικόλαος Καβάσιλας*, 90–92.

against usurers. It is universally assumed that the undated oration and the address to Anna of Savoy are approximately contemporary, written ca. 1351 and in Thessalonike. The date must be correct as far as the address to Anna of Savoy is concerned. However, the only reason for assuming contemporaneity between the two texts is the supposed similarity between them. While statements regarding the unfortunate position of the borrowers are, indeed, similar, the similarity ends here. The argumentation and the recommendations are quite different. Therefore, as far as I can see, there is no reason to assume either the date or the place of composition of the oration. The question should be reexamined. Meanwhile, it seems to me that the best and perhaps the only argument for contemporaneity lies in the opening statements of the oration, which, as I have already indicated, sounds almost like the *prooimion* to a piece of anti-usury legislation. But this is a rather thin argument.

In twelfth-century Byzantium, there had been creative thinking on interest by jurists, canonists, and, in a roundabout way, commentators on Aristotle. By the fourteenth century, western Europeans had already developed a very complex argumentation regarding interest. One is reminded, by way of comparison, of the most complex text that existed in Greek in the fourteenth century: the chapter on interest in Thomas Aquinas' *Summa Theologica,* translated into Greek by Demetrios Kydones before 1363, presumably in Constantinople;[54] it is an impressively accurate translation. There are some differences with the critical edition of the *Summa Theologica,* but since Kydones himself complained that he had only one manuscript at his disposal, and could not compare it with other versions,[55] one should be very careful about ascribing the divergences to the intent of the translator.

There is a dizzying difference in the level of argumentation between this and Kavasilas' texts. There are a few interesting parallels, such as the discussion of the force or constraint under which the borrower acts.[56] Only in one area are Kavasilas' arguments more developed: that is the issue of civil law, and the licit charging of interest according to its provisions.[57] St. Thomas' basic argument is that civil law lets a number of sins go unpunished so as not to inhibit certain benefits that may arise from them, since man is imperfect (ἀτελεῖς in the translation; Kavasilas often uses the adjective μοχθηρός as, for example, in PG 150: 744A, D). He says that civil law does not consider interest just, only necessary. This

[54] This is *Summa Theologica* II–II.78. The unpublished text of the translation was made available to me through the kindness of Professor E. Moutsopoulos and Mrs. A. Leontsini. On the issue, cf. F. Kianka, "Demetrius Cydones and Thomas Aquinas," *Byzantion* 52 (1982): 264 ff, and the bibliography on p. 266 note; St. G. Papadopoulos, *Ἑλληνικαὶ μεταφράσεις Θωμιστικῶν ἔργων* (Athens, 1967); A. Glykofridou-Leontsini, "La traduzione in greco delle opere de Tommaso d'Aquina," *Nicolaus* 3 (1975): 429–32.

[55] Kianka,"Cydones and Aquinas," 285.

[56] Parallels between the *Summa Theologica* (*ST*) and Kavasilas' oration: (1) *ST* 78.2.2: Argument of usurers: he who lends money does a favor (χάρις) to the borrower. Response: if the return is given by contract, it is not freely given. Kavasilas, PG 150: 733B: Some creditors say that the loans are like charity (ἐλεημοσύνη), for they profit the borrower. The response is rhetorical: is the creditor charitable for giving in order to gain, and for increasing his wealth through the labor of others? (2) The closest equivalent: *ST* 78.1.7: Τὸν τόκον ἑκουσίως ὁ δανειζόμενος δίδωσιν. Response: ὁ διδοὺς τόκον οὐχ ἁπλῶς ἑκουσίως δίδωσιν, ἀλλὰ μετά τινος ἀνάγκης καθόσον δεῖται λαβεῖν νομίσματα δανείῳ ἅπερ ὁ ἔχων ἄνευ τόκου οὐ βούλεται δοῦναι. Kavasilas 728B: Καὶ τίνα, φησίν, ἀδικοῦμεν, εἰ παρ' ἑκόντων λαμβάνομεν; Response: The injury is to God, for the borrowers do not pay interest willingly, but are forced into it: οὐ γὰρ ἀπὸ γνώμης ἐθελουσίου προϊέναι τ' ἀργύριον, ἀλλὰ φέρουσιν ἀποστερούμενοι καὶ ζημίας ἀλλάττονται ζημίαν. . . .Ὅτι γὰρ γραμματείοις κατέδησας, καὶ ἵνα μή, χρήσασθαι δεηθέντος, αὐθις ἀποστραφῆς, καταβοσκομένου τὴν οὐσίαν ἀνέχονται. Finally, there is harm to the polity.

[57] PG 150: 740–45; *ST* 78, art. 1, no. 4.

is very much what Leo VI had stated. Kavasilas, as we have seen, includes a similar argument, but gives it short shrift, presenting its refutation much more forcefully, and he also finds other reasons to play down the importance of civil legislation. The reason Kavasilas is more interested in this issue is, of course, the much heavier import of civil law in Byzantium than in the West.

Along with the theologians and men of letters, Thessalonike of the mid-fourteenth century could also boast the presence of jurists. Two among them are of primary importance and influence: Constantine Harmenopoulos and Matthew Vlastares. Given the general position of Byzantine civil law on the question of lending at interest, it is worth looking at the legal compilation of Constantine Harmenopoulos, the *Hexabiblos*, which had a long life and influence. In Book 3, Titles V (on loans and mortgages) and VII (on interest) of the *Hexabiblos*, the author repeats and summarizes the classic Byzantine legislation on interest. Harmenopoulos correctly understands the legal interest rates as ranging between 3, 4, 6, 8, and 12 percent per year (*Hexabiblos* 3.7.17). An incomplete *scholion* uses the pound of gold (72 nomismata) as the basis for calculating interest rates; this calculation, in use since the eleventh century, results in a maximum rate of 16.67 percent per year.[58] The *scholion* provides a novel and erroneous explanation of the calculation on the basis of the pound of gold. There are two original points which merit further discussion.

The first arises from a *scholion* to *Hexabiblos* 3.7.9, 11, 12, 13, on provisions that have to do with the overpayment of interest under various conditions, on the payment of interest agreed upon through stipulation (*Hexabiblos* 3.7.13), and on what happens when one has agreed, by written contract, to pay either excessive or compound interest (*Hexabiblos* 3.7.12). The scholiast, writing on or before 1353, interprets what appear to be contradictory provisions, and resolves the apparent contradiction. He introduces, not quite gratuitously but certainly without being forced to do so by the content of the laws, a strong statement regarding the maximum level which accumulated interest may reach. If, he says, one has paid interest which he owed or which he did not owe, whether it was legal or illegal, when the original sum (κεφάλαιον) is doubled, then the loan is considered to have been paid in full, both the capital and the legal interest.[59] There is nothing terribly novel in this provision, which is good Roman law; it is simply the repetition that is striking, as is the repetition of the prohibition in two other clauses. We may have here a reflection of a situation that did arise in contemporary Thessalonike;[60] perhaps excessive interest or compound interest over a period of time resulted in accumulated interest that exceeded the capital; this

[58] It may be worth repeating the classic Justinianic/Byzantine calculation of interest rates. The basis of the calculation is the rate of 1% per month (= 12% per year), called *centesima* (ἑκατοστή), which is the maximum rate permitted by Justinian I in 528, and which may be charged on sea loans and loans in kind. The other, lower rates, are calculated as fractions of the *centesima*. Thus merchants and bankers may charge 8% (*bes centesimae,* ἄχρι διμοίρου ἑκατοστῆς). People of the rank of *illustris* and above may charge interest only up to 4% (*tertia pars centesimae,* ἄχρι τρίτου ἑκατοστῆς), and all others may charge only 6% (*dimidia centesimae,* ἄχρις ἡμίσεος ἑκατοστῆς). Loans to pious foundations have a maximum interest rate of 3% (ἀπὸ τετάρτου ἑκατοστῆς). See *C.* 4.32.28, *Bas.* 23.3.74. When some Byzantines start calculating on the basis of the pound of gold (72 nomismata), so that the rate of 6%, for example, becomes 6 nomismata per pound (= 8.33%), there is a barely concealed rise in the interest rates. On this development, see Laiou, "God and Mammon," 269–80.

[59] This refers to *Hexabiblos* 3.7.23, but also to *Hexabiblos* 3.7.5 ("when the interest has doubled the capital, the interest payments cease").

[60] The *scholion* appears in two manuscripts: the Codex Constantinopolitanus (1353) and the Codex Bodleianus (1425).

not only was illegal but also, presumably, made it too difficult to pay off the debt, thus posing both economic and social problems.

The second novelty lies in the fact that, at the end of Title VII, after having discussed legal interest rates and the conditions governing interest-bearing loans, the jurist, Harmenopoulos, cites a law which is titled "Novel of the Caesar Leo, forbidding interest" (Νεαρὰ τοῦ Καίσαρος Λέοντος τὸν τόκον ἀπαγορεύουσα). The law is misattributed, for the content makes it clear that it is the law not of Leo VI but of Basil I, which we have already encountered (*Procheiros Nomos* 16.14). It had forbidden all lending at interest, on the basis of the prohibitions posited by "divine laws": hence the order that no one receive any interest whatsoever for whatever reason, "so that we do not contravene the law of God while observing the (civil) law." Leo VI, on the other hand, while accepting the greater morality of divine law, also cites the weakness of human nature, which makes it necessary that interest (albeit a low one) be permitted by human law. Harmenopoulos, however, cites the prohibition of Basil I, not mentioning the fact that it had been rescinded.[61] The most recent editor of the *Hexabiblos*, K. Pitsakis, writes that this is the most well known case of a "contradiction" in the *Hexabiblos*, and attributes it to a habit of Harmenopoulos who sometimes juxtaposes classic law (cited first) and "new" law (cited second).[62] There is something more to say on the subject. We note that the mention of "Leo's" (in fact, Basil's) law is followed by a reference to the fact that all clerics are prohibited from lending at interest, on the basis of the seventeenth canon of the first council of Nicaea and the tenth canon of the council in Trullo.[63] Whoever wrote this was, I suggest, trying to reinforce the negative points toward lending at interest which creep into the *Hexabiblos* through the citation of Basil's legislation.

One is forced to compare this novelty with the nomocanonical text of Matthew Vlastares, the *Σύνταγμα κατὰ στοιχεῖον* (*Alphabetical Treatise*), written in Thessalonike in close chronological proximity to the *Hexabiblos* (about ten years earlier). The purpose of this compilation was to bring together and harmonize civil and ecclesiastical law; to harmonize them means, to this learned monk, "to place those civil laws which are useful . . . together with the holy canons with which they are in alliance and with which they have a common voice."[64] Interest comes, logically enough, under letter T for τόκος. First are mentioned the canons of the Apostles, of St. Basil, and of the councils of Nicaea I, in Trullo, Laodicea, Carthage, all of which forbade interest taking to *clerics*. Then we come to the civil laws. The first law cited, without attribution, is that of Basil I which forbids all interest. It is then followed by the "old law," that is, the classic legislation which set the le-

[61] I will not discuss here the various debates regarding the dating of the *Procheiros Nomos* and whether it was issued by Basil I (the traditional view) or by Leo VI. The traditional dating has been disputed by A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern* (Frankfurt, 1986); his arguments have been countered by Th. E. van Bochove, *To Date and Not to Date: On the Date and Structure of Byzantine Law Books* (Groningen, 1996), 29–56.

[62] *Hexabiblos* 3.7.24. Cf. K. G. Pitsakis, *Κωνσταντίνου Ἀρμενοπούλου Πρόχειρον Νόμων ἢ Ἑξάβιβλος* (Athens, 1971), 203 note 2. On interest legislation in the *Hexabiblos*, see S. Troianos, "Ἡ περιπέτεια τοῦ βυζαντινοῦ δικαίου στὴν Ἑλλάδα τοῦ 19ου αἰώνα: Ἡ περίπτωση τῶν τόκων," in *Πρακτικὰ 16ου Πανελληνίου Ἱστορικοῦ Συνεδρίου* (Thessalonike, 1996), 219–333.

[63] *Hexabiblos* 5.7.25. According to Heimbach, this note also is a marginal gloss to the Codex Constantinopolitanus; it is not known, therefore, whether it originates from the pen of Harmenopoulos or another.

[64] Rhalles-Potles, *Σύνταγμα*, 6, p. 5; Sp. Troianos, *Οι πηγές του Βυζαντινού δικαίου*, 2d ed. (Athens, 1999), 298.

gal rates.[65] Presumably, in the eyes of Vlastares, the old law is superseded by the new law, although he does not say so. We shall return to the law of Basil I one more time.

Vlastares, however, was not of a single mind, it would appear. For he then discusses the "old law." After having mentioned the legal interest rates, he says that as far as sea loans are concerned, if the borrower assumes the risk the lender may charge only the legal rate, that is, the *hekatoste*, which he correctly defines as 12 percent per year. But if the risk is assumed by the lender, then he may go above the legal rate. This is, indeed, an intriguing statement. To be sure, pre-Justinianic legislation had permitted those who lent money in sea loans and assumed the risk to charge interest above the legal rate (*C.* 4, 33.1–4). This was included in the *Basilics* (53.5.16–19, Περὶ δανεισμάτων διαποντίων) which, however, also repeats the Justinianic legislation that limits interest on sea loans to 12 percent per year.

Furthermore, and this is the important point, the classic legislation (*Bas.* 23.3.74 = *C.* 4.32.26),[66] which lists the various interest rates allowed by Justinian, specifically states that *in the past* it had been permitted to charge higher interest in sea loans and loans in kind (50% in the latter case). The present legislation, it continues, still allows higher interest than for other loans, but this higher interest is limited to the *hekatoste*, that is, 12 percent. Unexpectedly, Vlastares, despite this clear and unambiguous statement, and in contradiction to the law, says that the creditor who assumes the risk is allowed interest "above the legal interest," where "legal" is defined as the *hekatoste*.[67] This is truly an exceptional position, which seems almost like a conscious misinterpretation of the law—to cover current practices? Interestingly, Harmenopoulos' reading of the laws is the one intended by Justinianic legislation: he says that those making sea loans may charge the full 12 percent and that the creditor who does not assume the risk may not charge this μείζονα τόκον which the 12 percent represents.[68]

Of all of the other legislation concerning interest, Vlastares mentions only two provisions. First, he notes that the total interest may not exceed the amount of the capital; when it does, the excess is counted against capital. Second, he cites the basic rule of Roman law, that one may not charge interest on the interest (that is, compound interest is not allowed).

The text of Vlastares deserves some comment. First, the fact that canon law precedes civil law is normal in such a text. Second, the admission that sea loans can carry more than the legal interest, depending on who assumes the risk, is a reference to contemporary realities.[69] Third, while Vlastares admits the existence of legal interest, it is clear that he dis-

[65] Rhalles-Potles *Σύνταγμα*, 6, T. 7, pp. 473–76. According to Sp. Troianos, "Περὶ τὰς νομικὰς πηγὰς Ματθαίου τοῦ Βλάσταρη," *Ἐπ.Ἑτ.Βυζ.Σπ.* 44 (1979–80): 321, the source for the provisions is the Justinianic Code; T 7. 475.26–476.12 is *C.* 4.32.26 (cf. *Bas.* 23.3.74); T 7.476.16–18 is *C.* 4.32.26.4 (cf. *Bas.* 24.6.26); T 476.19–20 is *C.* 2.11.20, 4.32.28. (cf. *Bas.* 23.3.29). T476.12–15 derives from the commentary of Valsamon on canon 17 of the Council of Nicaea: Rhalles-Potles, *Σύνταγμα*, 2: 153, 19–22.

[66] Cf. *Hexabiblos* 3.7.23.

[67] The 10th-century *Ἐκλογὴ Νόμων* summarizes the legal provisions on maritime loans in a way that makes Vlastares' interpretation possible: Zepos, *Jus* 4, *Epitome legum* 17: 85–88. Vlastares does retain the Justinianic disposition regarding interest on loans in nature (12%).

[68] *Hexabiblos* 3.7.18–19.

[69] A document dated 1425 in K. D. Mertzios, *Μνημεῖα Μακεδονικῆς Ἱστορίας* (Thessalonike, 1941), 55–56, mentions an interest rate of 20% on sea loans as being normal, and of long usage in Thessalonike. The Venetians found this excessive and lowered it to 15%.

approves, as a cleric must. This is proven both by the inclusion of the defunct legislation of Basil I and by the fact that the two other provisions he mentions are restrictive ones. If we now see the two texts of Harmenopoulos and Vlastares together, it may be that the mention of Basil's law in Harmenopoulos is not a routine matter, but rather a reminder to his readers that there had, indeed, existed a civil law that forbade interest. We must also connect this with Kavasilas' statement that the "new" law, of Basil I, should supersede the "old," that is, Justinianic law, and thus that all interest should be forbidden. Kavasilas had legal training of some sort, although not too much. His oration certainly was written after the *Nomocanon*. It was probably written after the *Hexabiblos*, and it may have been influenced by these texts. In any case, the combination suggests very strongly that in Thessalonike of the mid-fourteenth century (or thereabouts) there was a strong juridical bias against interest-bearing loans. It is irrelevant to our topic narrowly construed, but not to the larger question, that the patriarchal court of Constantinople in the fourteenth century mentions interests far above the legal ones, and also that the court was hostile to the charging of interest.[70] It is not irrelevant to repeat that even Vlastares bows to real conditions, in which money was dear.

We may now make some general observations. The middle to late fourteenth century was a troubled time in Thessalonike because of the civil wars and the civil strife. This situation, which began in the 1320s, must be kept in mind. The economy was active and productive in the first half of the century, until the start of the second civil war. Agriculture seems to have been productive, diversified, and market-oriented, while Thessalonike was a center of trade for cereals and cloth, among other commodities. But the political instability introduced elements of economic instability. This was a monetized economy, and people borrowed money. They borrowed for productive purposes, to be sure. But by the time of the civil war, profits were uncertain and there were reversals of fortune. Kavasilas' address to Anna of Savoy suggests all this, and also the existence of consumption loans, since it talks of people who had lost everything except for a ruined house or rags on their backs, which the creditors would request in satisfaction of their loans. Similar evidence comes from Isidore of Thessalonike in a much worse economic environment. Credit clearly was dear, a fact which must be seen in the context of the devaluation of the coinage. Devaluation meant a decreasing real value of the interest payments, which normally leads to higher interest rates, as the creditors try to compensate for the decreasing value;[71] this is rational behavior, but devaluation also undoubtedly created a psychology of instability among creditors. There was as well, it seems, greater social stratification and a growing gap between rich and poor in Thessalonike.

The economic thoughts and attitudes of the fourteenth-century intellectuals of or in Thessalonike reflect the problems of the economy and the concerns of society. The economy was active in the first half of the century, and market principles were followed; but it

[70] See MM 2: 380–81, 313–14; cf. N. P. Matses, "Ὁ τόκος ἐν τῇ νομολογίᾳ τοῦ Πατριαρχείου Κωνσταντινουπόλεως κατὰ τοὺς ΙΔ΄ καὶ ΙΕ΄ αἰῶνας," *Ἐπ.Ἑτ.Βυζ.Σπ.* 38 (1971): 83; E. Papagianni, *Ἡ νομολογία τῶν ἐκκλησιαστικῶν δικαστηρίων τῆς βυζαντινῆς καὶ μεταβυζαντινῆς περιόδου σέ θέματα περιουσιακοῦ δικαίου*, vol. 1 (Athens, 1992), 48 and 97.

[71] If we knew the exact interest rates charged (nominal interest) and the precise rate of devaluation, we would be able to calculate by how much the *real* interest rates (nominal interest discounted by the expected devaluation rate) rose: i(nominal) – E(dev) = i(real). We do not, however, have such exact information.

operated with an increasing degree of uncertainty. This led thinking people to speculate on causes and remedies. Along with speculation on moral and political issues, there was concern about the terms of exchange and credit. For the first time since the ninth century, there were voices arguing for the prohibition of interest-bearing loans. That the arguments were not entirely consistent, and that they mostly went in a different direction from that which seems to have been followed in the matter of freedom of exchange is not, perhaps, surprising; for we do not have here a developed economic theory but, rather, responses to contemporary realities.

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